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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,672	03/30/2004	Theodore John Cole	VPI-001	3562
22506	7590	03/14/2006	EXAMINER	
JAGTIANI + GUTTAG 10363-A DEMOCRACY LANE FAIRFAX, VA 22030			ARNOLD, ERNST V	
			ART UNIT	PAPER NUMBER

1616

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/812,672	Applicant(s) COLE ET AL.	
	Examiner Ernst V. Arnold	Art Unit 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

The Examiner acknowledges receipt of Applicant's remarks filed one 11/30/2005. Applicants arguments have been carefully considered but have not been found to be persuasive. This action is non-final. New grounds of rejection are presented. The claims remain rejected for the reasons of record and those stated below.

1. Applicant's amendment of claim 1 has overcome the 35 USC 112 second paragraph rejection.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 remain/are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Instant claims 1-6 are drawn to a product, which is a naturally occurring element combination. The Examiner interprets "naturally occurring element combination" to mean a mixture that is found in nature. Therefore, the Examiner interprets the naturally occurring element combination to be a product of Nature. By applicant's own admission, the product of instant claim 1 is a product of nature, which is non-statutory subject matter. Claims 1-6 are included here, because the claims are drawn to naturally occurring element combinations.

**2. Response to Arguments:**

Applicant argued that it is not the intention in Claim 1 to cover a "mixture that is found in Nature". To satisfy 35 USC 101, an invention must be useful. (MPEP 2107.01) However, the combination of naturally occurring elements, without a further hand of man, has no recited utility other than being a bunch of elements. Therefore, claims 1-6 remain rejected. In addition, claim 1 still reads on pearls because part (a) recites pearls and part (b) recites pearls.

3. The rejection of claims 1, 7-13, 16 and 18 under 35 USC 102(b) over 6,143,946 is withdrawn as 6,143,946 does not teach or suggest the instant combination of elements in the therapeutic mat.

4. The rejection of claims 1 and 11-20 under 35 USC 102(b) over Phybiosis Medicinal Clay Technical Specifications is withdrawn as the Specifications does not teach or suggest the elements from the first group in instant claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 7-10, 16 and 18 remain/are rejected under 35 U.S.C. 102(b) as being unpatentable over Ridgley et al. (US 6,378,138).

Ridgley et al. disclose an article of clothing that incorporates various types of healing devices such as crystals for healing various bodily ailments (Abstract; column 1, lines 36-44; and claims 1-9). The healing elements include tourmaline, smoky quartz and pyrite, for example (For listing of elements see: column 2, line 18-column 4, line 15). Tourmaline is a complex borosilicate mineral with varying amounts of aluminum, iron, magnesium, sodium, lithium, potassium, and sometimes other elements, used as a gem. Red and pink tourmaline is known as rubellite thus reading on instant claim 1. The naturally occurring elements are incorporated into the waistbands of stockings, hosiery and pantyhose as well as ankle bands hence reading on instant claims 7-9 and 11 (Column 24, lines 1-13 and column 5, lines 15-27). The Examiner interprets the ankle band as synonymous with ankle strap. Wearing the clothing places the combination of naturally occurring elements next to the body of the user, which would necessarily place the naturally occurring element combination in close proximity to the user; therefore reading on instant claims 16 and 18.

**5. Response to Arguments:**

Applicant asserted that Ridgley et al. did not disclose any of the elements from the first group in Claim 1. The Examiner respectfully disagrees as Ridgley et al. anticipated the inclusion of tourmaline, which, as stated in the previous office action, is just another term for rubellite.

***Claim Rejections - 35 USC § 102***

Claims 1, 3-8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Leong (US 6,145,341).

Leong discloses a jewelry piece comprised of two gemstones, (Please note: The Examiner interprets this to mean 1 part from the first group of instant claim 1 and one part from the second group of instant claim 1 thus reading on instant claims 4 and 5.), selected from the group consisting of:

30    **3. A uniquely mating jewelry item according to claim 1,**  
      wherein said gemstone is selected from the group consisting  
      of chalcedony, sard, hessonite, tourmaline, rubellite, school,  
      verdelite, amethyst, prase, hawk's eye, chrysoprase,  
      heliotrope, dendrite, scenic agate, mosquito agate, moss  
35    agate, layer onyx, jasper, jadeite, zoisite, thulite, amazonite,  
      labradorite, turquoise, lapis, sodalite, azurite, chinastolite,  
      euclase, cassiterite, variscite, kyanite, hemmophite,  
      smithsonite, eilate stone, serpentine, ulexite, magnetite-jade,  
      howlite, silver gem, tufa, marble, alabaster, smoke quartz,  
40    tiger-eye, malachite, agate, opal, obsidian, quartz, Mexican  
      agate, jade green nephrite, rose quartz, aventurine, lace  
      agate, carnelian, ammolite, unakite, goldstone,  
      rhodochrosite, African picture jasper, leopard jasper, crazy  
      lace agate, Picasso jasper, sodalite, azurite malachite, copper  
45    malachite, ruby in zoisite unakite, goldshine obsidian, poppy  
      jasper, snowflake obsidian, gemstones using dichroism and  
      gemstones using pleochroism.

Leong anticipate combinations of rubellite and tourmaline, for example (Claim 3).  
Leong anticipate pendants, brooches, tie tacks, rings, belt buckles, lockets, charms,  
necklaces, bracelets, chokers, earrings, and arm bands, which are all devices, some  
with straps, that can be applied to the body thus reading on instant claims 7-8 and 11  
(Claim 2).

***Claim Rejections - 35 USC § 102***

Claims 1, 11, 12, 13 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by DERWENT-ACC-NO: 1990-140052 abstracting CN 1033154.

The DERWENT abstract of CN 1033154 discloses an eye drop composition comprising pearl, silver, abalone shell, mirabilite and water. The Examiner interprets eye drops to mean a composition capable of being applied to the body and, in this case, to coat the eye. The Examiner also interprets this aqueous composition as being ingestible.

***Claim Rejections - 35 USC § 102***

Claims 1 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by DERWENT-ACC-NO: 2000-148175 abstracting CN 1235834.

The DERWENT abstract of CN 1235834 discloses pearl water for health care made by adding 0.1-1% soluble pearl powder into drinking water. It contains 13 kinds of amino acids and 28 kinds of trace elements. The Examiner interprets this to read upon an ingestible beverage that when consumed provides health benefits with the combination of pearl and 28 kinds of trace elements.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Claims 1, 16 and 19 and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over DERWENT-ACC-NO: 1990-140052 abstracting CN 1033154.

The DERWENT abstract is discussed above and that discussion is hereby incorporated by reference.

The DERWENT abstract does not expressly disclose a method of treating an individual in need of vibrational therapy or a kit including the combinations of instant claim 1 and instructions for using the combinations of instant claim 1.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to treat individuals in need of vibrational therapy with a kit including the composition of the DERWENT abstract and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because all individuals can benefit from vibrational therapy, including those in need of eye drops, for better overall health. The eye drops must be dispensed from an eye drop-dispensing device, which customarily has written directions for use.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the of the cited reference.



***Claim Rejections - 35 USC § 103***

Claims 1, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leong (US 6,145,341).

The reference of Leong is discussed in detail above and that discussion is hereby incorporated by reference.

Leong does not expressly disclose the composition in the form of clothing or furniture.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to incorporate the composition of Leong into clothing and furniture and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because adding ornamentation to clothing and furniture would increase the inherent value of the clothing and furniture. It is well within the purview of one of ordinary skill in the art to select the appropriate materials used to create the jewelry or clothing or furniture.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the of the cited reference.

***Claim Rejections - 35 USC § 103***

Claims 1, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over DERWENT-ACC-NO: 2000-148175 abstracting CN 1235834.

The DERWENT abstract is discussed in detail above and that discussion is hereby incorporated by reference.

The DERWENT abstract does not expressly disclose a method of treating an individual in need of vibrational therapy wherein the combination of elements is ingested.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made treat individuals in need of vibrational therapy with the composition of the DERWENT abstract and produce the instant invention.

One of ordinary skill in the art would have been motivated to do this because all individuals are in need of positive health benefits. It is within the purview of one of ordinary skill in the art to select the appropriate ingredients in the pearl water for health care.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly disclosed or suggested by the of the cited reference.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DERWENT-ACC-NO: 2002-440464 abstracting JP 2002101929 (04/09/2002) discloses decorative pearl for use in ear ring, necklace, has a decorative material such as gold foil or silver leaf embedded into its surface.


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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